

Exhibit B

**THE OPEN RANGE SHEEP INDUSTRY IN CALIFORNIA AND THE
QUESTION OF IMPOSING A STATE MINIMUM WAGE ON
SHEEPHERDERS**

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EXECUTIVE SUMMARY

Most sheepherders in California, like most sheepherders in the United States, are aliens legally admitted to the United States for the express purpose of working as sheepherders. In 1999 the California Economic Development Department estimated there were 206 legally admitted aliens and 29 domestic workers employed as open range sheepherders in California.

Sheepherding is a unique occupation, which is regulated under a specific set of federal guidelines applicable to the sheepherding occupation in all 10 Western states where open range sheepherders are employed. Sheepherding is an exempt occupation under IWC wages orders, and should remain so for the following reasons:

1. An hourly wage standard is not appropriate for the shepherding occupation.
2. IWC coverage is not necessary to protect the wages of California sheepherders. Their wages are protected by a wage special wage scheme for sheepherders in all 10 western states promulgated and revised annually by the U.S. Department of Labor.
3. The current wage protections in place for sheepherders in California are working. Earnings of California sheepherders are comparable to the earnings of IWC-protected peer workers.
4. Imposing on California sheepherders an hourly minimum wage, or a minimum wage rate higher than that under the current federal regulatory scheme, would hasten the extinction of an industry already in severe economic distress.

California sheepherders' earnings, including imputed amounts for housing and food, exceed the earnings of a full-time farmworker working at the average California farmworker hourly wage. California sheepherder's annual earnings are in the 80th percentile of U.S. farmworker annual earnings, including imputed values for food and housing, and in the 70th percentile even ignoring the value of the free food and housing provided to California sheepherders. California sheepherder wages have kept pace with the wages of IWC-regulated farm and non-farm workers in California.

The California sheep industry is in severe economic distress. Wool prices at the farm level are down 60 percent from 1980 prices, while lamb prices have increased only 18 percent from 1980 prices. The prices of farm inputs have increased 53 percent, and the wages of sheepherders 78 percent, during these two decades. As a result, many California sheep ranchers are operating at returns below cost, and are rapidly disappearing. The number of commercial sheep ranches in California has declined by more than 50 percent in the past 15 years, and there are now fewer than 100 such operations left. To impose a minimum wage scheme on sheepherding that would further increase the wages of California sheepherders would be unnecessary and unfair, and further hasten the disappearance of this industry from the state.

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4. Imposing on California sheepherders an hourly minimum wage, or a minimum wage rate higher than that under the current federal regulatory scheme, would hasten the extinction of an industry already in severe economic distress.

The Occupation of Sheepherding

Sheepherding is one of man's oldest occupations, and it has changed little since biblical times. An "open range" sheepherder tends a flock of sheep and lambs (now typically referred to as a "band") in open range. This is in contrast to farm flocks of sheep kept in fenced pastures, where sheepherders are not required.

A band of sheep typically numbers approximately 1,000 ewes, together with their lambs. When the lambs are present, the band of ewes and lambs will number from 2,000 to 2,500 head. The open range sheepherder lives and travels with this band of sheep day and night, protecting the sheep from predators and from eating poisonous plants, moving the band to new grazing land each day and bedding them down at night. Typically, during a portion of the year the sheep range is in the mountains or desert, often in exceedingly remote areas. The sheep typically graze on the lower elevations in the spring, gradually moving to higher elevations in the summer and back to lower elevations in the fall. At other times, and especially during the shearing and lambing seasons, the sheep are grazed on pasture on the valley floor and on the aftermath of hay and other crops.

While the herders are living with the flocks on the open range they live in mobile housing called "sheep camps" or "sheep wagons" that move daily with the band of sheep. Sheep camps are typically travel trailers mounted on motorized vehicles or specially outfitted horse-drawn wagons. In wilderness areas where such camps are not permitted, the sheepherders live in tents. All sheepherder housing must meet *specific*

federal standards for sheepherder housing, and is inspected and certified annually or biannually by the California Economic Development Department (EDD), depending on the jurisdiction and accessibility.

Herders typically work individually with one band, or in pairs with two bands that graze together. The herders travel in motorized vehicles or on horseback. They are usually accompanied by several herding dogs, whose job it is to assist the herder to move the flock, and several guard dogs who protect the sheep and lambs from predators. While on the range, the herders are supplied with food, water and other living necessities by a "camp tender" who re-supplies the camp from once a week to once or twice a month, depending on the remoteness of the locations.

Typically during several months in the winter and early spring during lambing season the bands are on the valley floor. When the herders are on the valley floor they live in their sheep camps or in bunk houses. Bunk houses must also be inspected and licensed by the EDD.

A herder's "work day" typically consists of moving the sheep to new pasture in the morning, observing the sheep during the day as they graze to assure that there are no problems, bedding the band down at night, and being alert during the night for possible indications of predators. The presence of predators is usually signaled by the actions of the guard dogs or signs of restiveness among the sheep that experienced herders have learned to recognize. In some circumstances the herder strings temporary fencing during the day to keep the sheep in or out of specific areas, such as areas where poisonous plants have been detected. Also, in some circumstances where water is not naturally available, the herder may secure water for the sheep using a water truck.

For periods of a few weeks during the shearing and lambing seasons the work day is very different. During lambing the herders and the rancher must observe and

assist ewes who are having difficulty in lambing or care for weak lambs and assure that lambs are nursing. This is an extremely intense period, and, of course, lambing occurs around the clock. Shearing is typically done by contract shearing crews, but the rancher and herder assist by moving sheep to and from the shearers.

The Western Range Association

The H-2A sheepherder program is administered by the U.S. Department of Labor (USDOL) and the Immigration and Naturalization Service (INS). Virtually all employers of the H-2A sheepherder program in California are members of the Western Range Association (WRA), headquartered in Citrus Heights, CA, which assists its rancher members to use the program. The WRA assists its rancher members by completing and filing the necessary applications with the USDOL and the INS, conducting required recruitment for domestic sheepherders, recruiting alien sheepherders, arranging and paying for transportation to and from the herders' home country and within the United States, securing visa extensions for herders, transferring herders among members, and generally assisting both herders and rancher members in using the program.

The Western Range Association has voluntarily organized itself as a "joint-employer association" within the meaning of the H-2A regulations. This means the Association assumes joint liability with its members for compliance with H-2A program requirements and all employment-related laws and regulations. For example, if a member files for bankruptcy and fails to pay the herders, the WRA will assure that the herders' wages are paid. The Association suspends and terminates the membership of members who fail to comply with Association rules or legal requirements. Since the H-2A program is very difficult for an individual rancher to use, the threat of suspension or termination by the WRA is an effective means of securing compliance.

As a joint employer with its members the WRA is also a joint guarantor with its members of the written employment contract entered into with every sheepherder. Among other things, the contract guarantees the herder full time employment for three years. If a rancher no longer needs a herder, or a herder is dissatisfied with his employer, the WRA will transfer the herder to another rancher member. Individual rancher members cannot terminate a herder's employment with the WRA, they can only refer the herder to the association for reassignment. Involuntary termination of herders by the WRA are very rare. Herders who are terminated, whether voluntarily or involuntarily, are offered prepaid return transportation to their home country by the WRA.

The H-2A Sheepherder Program

Before an alien sheepherder can be admitted to the United States to work for a U.S. employer, an application for a temporary alien labor certification must be filed with the USDOL and the California EDD. The regulations of the USDOL governing H-2A temporary alien labor certifications and the obligations of employers of H-2A workers are published at 20 C.F.R. §655, Subpart B. However these regulations give the Secretary of Labor authority to promulgate special rules for H-2A workers who are to be employed in special circumstances. The Secretary of Labor has recognized the unique circumstances of the sheepherder occupation by issuing special "Sheepherder Guidelines" [ETA Field Memorandum 74-89, "Special Procedures: Labor Certification for Sheepherders Under the H-2A Program"].

The WRA conducts year 'round recruitment for domestic sheepherders. All qualified U.S. applicants are required to be offered jobs. Typically the WRA receives fewer than a dozen domestic applicants a year. To be considered qualified, a U.S. applicant need only have 90 days of prior experience as a sheepherder. The WRA files applications for temporary labor certification on behalf of their employer members. If a

Non-Wage Benefits of Sheepherders

In addition to their cash wages, California sheepherders receive substantial non-wage benefits. It has already been mentioned that sheepherders are provided with housing and food at no cost to the worker. Housing must meet applicable federal standards. Mobile sheep camps are inspected annually or biannually depending on the jurisdiction according to special sheepherder mobile housing standards promulgated by the USDOL. Permanent housing (bunk houses) are inspected and approved annually according to federal Occupational Safety and Health Administration (OSHA) farm labor camp standards. Herders are covered by Workers Compensation Insurance. In addition, they are covered for non-occupational accidents and illness by a Western Range Association group insurance policy to which the sheepherder is required to contribute only \$13 per month. Herders are entitled to two weeks paid vacation, which they can take either as actual vacation or as extra compensation.

All Western Range Association sheepherders are covered by a written employment contract which guarantees the herder employment for 3 years. As a joint employer, and to fulfill this contract guarantee, the WRA may transfer the herders from one ranch to another as needed during the 3-year period. The Western Range Association pays the cost of herders' inbound transportation to the United States, as well as the cost of transportation from one employer to another if the herder is transferred. In accordance with provisions of the USDOL H-2A regulations and H-2A sheepherder guidelines, part of the cost of the inbound transportation to the United States is deducted in increments from herders' initial monthly paychecks, but is fully reimbursed to the herder when the herder completes the first half of the 3-year employment contract. The WRA provides return transportation to the home country to all herders, although USDOL regulations do not require paying return transportation to herders who do not complete their contracts.

As a practical matter, most herder's out-of-pocket expenses are limited to the \$13 monthly insurance charge and their expenses for personal items such as cigarettes , clothing, and the like. Most herders save a very substantial portion of their cash wages. It is not unusual for herders to save or send home \$7,000 or more annually. This is substantially more than the annual savings of the average middle income U.S. worker.

The WRA provides all of its sheepherders with a "welcome package" in addition to their employment contract, which explains the terms and conditions of employment, the medical insurance program, and other information that herders may need. It includes a telephone number to the WRA which is staffed by Spanish speaking staff and which herders may call collect for any reason. Herders are also provided with the telephone numbers of their consulates in Los Angeles, San Francisco, and other areas. The WRA takes complaints of non-compliance and mistreatment very seriously, and responds as promptly as possible to all requests for assistance from herders. If a herder requests reassignment to another ranch because of alleged mistreatment or for other reasons, the WRA will accommodate such requests provided the herder is adequately performing his duties. Very few herders are involuntarily terminated by the WRA, and if they are, their return transportation is provided. Well over half of all herders return for additional contracts when their previous contract is completed. Of those who do not, many have accumulated enough money that they have been able to set themselves up in ranching or other businesses in their home countries and no longer need to work in the United States.

In addition to housing inspections by the California EDD, the USDOL's Wage and Hour Division conducts audits of employers' compliance with the H-2A regulations and other applicable labor laws both on a complaint-driven and random basis. The Peruvian consulates also visit their sheepherders periodically. As explained above, the WRA has voluntarily entered into a joint-employment arrangement with its members, and therefore the Association as well as its members is obligated for